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8 UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

9 RED LION HOTELS  
FRANCHISING, INC.,

10  
11 Plaintiff,

12 v.

13 CENTURY-OMAHA LAND, LLC;  
and EDWIN W. LESLIE,

14 Defendants.

No.

COMPLAINT

15  
16 Red Lion Hotels Franchising, Inc. makes the following complaint against  
17 Century-Omaha Land, LLC, and Edwin W. Leslie.

18 **PARTIES**

19 1. Plaintiff Red Lion Hotels Franchising, Inc. (“Red Lion”) is a  
20 Washington corporation with its principal place of business in Spokane,  
21 Washington.  
22  
23

COMPLAINT - 1

1           2.     Defendant Century-Omaha Land, LLC (“Century-Omaha”) is a  
2 limited-liability company organized under the laws of South Dakota whose two  
3 members are citizens of South Dakota.

4           3.     Defendant Edwin W. Leslie (“Leslie”) is a citizen of Nebraska.

5                               **JURISDICTION AND VENUE**

6           4.     This Court has jurisdiction over this action pursuant to 28 U.S.C.  
7 § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest  
8 and costs, Red Lion is a Washington corporation with its principal place of  
9 business in Spokane, Leslie is a citizen of Nebraska, and Century-Omaha is a  
10 citizen of South Dakota.

11          5.     This Court also has jurisdiction over this action pursuant to 15 U.S.C.  
12 § 1121(a) and 28 U.S.C. §§ 1331 and 1367.

13          6.     Venue is proper in this district pursuant to 28 U.S.C. § 1391 because  
14 Red Lion signed the contracts at issue in this district, and the contracts state that  
15 the state and federal courts in and of Spokane, Washington will be the exclusive  
16 venues for any dispute between the parties.

17          7.     This Court has personal jurisdiction over each Defendant because the  
18 Defendants entered into transactions with a business located within the bounds of  
19 this Court, each Defendant consented to this Court’s jurisdiction, and each  
20 Defendant will be served with process.

**FACTS**

**A. Franchise License Agreement**

8. On October 31, 2016, Red Lion and Century-Omaha entered into a Franchise License Agreement (as amended, the “Franchise License Agreement”). Red Lion and Century-Omaha amended the Franchise License Agreement on March 2, 2017.

9. Under the Franchise License Agreement, Red Lion granted Century-Omaha the limited right to use Red Lion’s intellectual property in connection with the operation of a hotel located in Omaha, Nebraska (the “Hotel”).

10. In exchange for this right and other consideration given, Century-Omaha agreed to pay certain affiliation, franchise, royalty, program, and reservation fees, including those identified in Section 7 of the Franchise License Agreement. Century-Omaha agreed to pay Red Lion’s attorney’s fees should Red Lion hire legal counsel to collect any amounts due under the agreement.

11. The Franchise License Agreement gave Red Lion the right to terminate Century-Omaha’s rights if Century-Omaha failed to pay its debts under the Franchise License Agreement. In the event of termination, Century-Omaha would be required to immediately pay Red Lion all outstanding debts, together with liquidated damages. Following termination, Century-Omaha would also be required to immediately de-identify itself as a Red Lion franchise by removing all Red Lion proprietary marks (the “Marks”) from the property.

12. Any enforcement action involving Red Lion's Marks under the Franchise License Agreement is within the exclusive jurisdiction of the state and federal courts in Spokane County, Washington.

**B. Leslie's Personal Guarantee of the Franchise License Agreement**

13. On October 31, 2016, Red Lion and Leslie entered into an agreement whereby Leslie personally guaranteed Century-Omaha's performance under the Franchise License Agreement ("FLA Guarantee"). Leslie reaffirmed his obligations under the FLA Guarantee on February 28, 2017.

14. The FLA Guarantee states that Leslie will be liable for the payment and performance of all obligations under the Franchise License Agreement.

15. The FLA Guarantee specifies that any enforcement action under the guarantee will be governed by the laws of Washington and that Leslie submits to the exclusive jurisdiction of the federal and state courts in Spokane County, Washington. Leslie also waived any objection to venue in this Court.

**C. PIP Financing Agreement**

16. Red Lion and Century-Omaha are parties to a Property Improvement Plan Financing Agreement dated October 26, 2016 (the "PIP Financing Agreement").

17. Under the PIP Financing Agreement, Century-Omaha agreed to use \$750,000 loaned to it by Red Lion for the purpose of making certain specified improvements.

1 18. Century-Omaha's obligations under the PIP Promissory Note are  
2 secured by a Deed of Trust, Assignment of Rents and Security Agreement dated  
3 October 25, 2016, for real and personal property in Omaha, Nebraska, described as  
4 "Lot 1, Lawnfield Replat No. 4, an administrative subdivision in the City of  
5 Omaha, in Douglas County, Nebraska."

6 19. As evidence of its obligation to repay the loan, with interest, Century-  
7 Omaha executed a Promissory Note dated November 1, 2016 (the "PIP Promissory  
8 Note"), with an original maturity of April 30, 2017.

9 20. Upon default, interest began to accrue under the PIP Promissory Note  
10 at the rate of 12 percent per annum.

11 21. Century-Omaha has defaulted in its obligations under the PIP  
12 Promissory Note by failing to make payment as and when required.

13 **D. Key Money Promissory Note**

14 22. On November 15, 2016, Century-Omaha executed and delivered to  
15 Red Lion a Key Money Promissory Note (the "Key Money Note") in the original  
16 principal amount of \$175,000.00. The loan under the Key Money Note amortized  
17 over 10 years beginning on October 31, 2016. Red Lion ultimately funded  
18 \$169,833.46 of the Key Money Note. The Key Money Note was amended on  
19 March 2, 2017, to provide for an additional principal loan of \$175,000, although  
20 Red Lion did not end up advancing the additional loan.

21 23. If either party terminated the Franchise License Agreement, Century-  
22 Omaha was required to pay Red Lion the principal balance plus interest at the

1 higher of 18 percent per annum and the maximum rate permissible under  
2 applicable law.

3 24. The Key Money Note requires Century-Omaha to pay Red Lion's  
4 attorney's fees and other costs and expenses incurred in collecting or enforcing the  
5 Key Money Note.

6 25. The Key Money Note held that any enforcement action would be  
7 governed by the laws of Washington and that the federal or state courts in  
8 Washington would have exclusive jurisdiction over that action.

9 **E. Hotel Improvement Financing and Security Agreement**

10 26. On October 31, 2016, Red Lion and Century-Omaha executed the  
11 Hotel Improvement Financing and Security Agreement (as amended, the  
12 "Financing Agreement"). On March 2, 2017, Red Lion and Century-Omaha  
13 amended the Financing Agreement.

14 27. The Financing Agreement authorized a loan of up to \$200,000 (later  
15 amended to increase the loan to \$400,000) from Red Lion to Century-Omaha to  
16 finance the implementation of certain improvements to the Hotel, including the  
17 purchase of new televisions, beds, a coffee station, and Wi-Fi network equipment  
18 (the "Improvements").

19 28. The Financing Agreement also created a security interest in the  
20 Improvements in favor of Red Lion. Red Lion perfected its security interest in the  
21 Improvements by filing a financing statement with the Secretary of State for South  
22 Dakota on March 26, 2018.

1        29. On October 31, 2016, as evidence of the loan, Century-Omaha  
 2 executed and delivered to Red Lion a Promissory Note (as amended, the “Note”) in  
 3 the original principal amount of \$200,000 later increased to \$400,000 by an  
 4 amendment dated March 2, 2017. The Note required Century-Omaha to pay.  
 5 interest at a rate of two percent per annum and to make regular monthly payments

6        30. The Note made it clear that Century-Omaha would automatically  
 7 default under the Note if it missed any payment. A default would result in all  
 8 amounts payable under the Note becoming immediately due upon demand by Red  
 9 Lion, with interest accruing from the date of default at a rate equal to the higher of  
 10 18 percent and the maximum per annum rate permissible under applicable law. The  
 11 Note also required Century-Omaha to reimburse Red Lion for all attorney’s fees  
 12 incurred in connection with collecting or enforcing the Note.

13        **F. Leslie’s Personal Guarantee of the Hotel Improvement**  
 14        **Financing and Security Agreement**

15        31. On October 31, 2016, Red Lion and Leslie entered into a Guarantee of  
 16 Financing and Security Agreement whereby Leslie personally guaranteed Century-  
 17 Omaha’s obligations under the Financing Agreement, the Franchise License  
 18 Agreement, and the Note (the “Financing Agreement Guarantee”).

19        32. The Financing Agreement Guarantee states that Leslie will be  
 20 personally liable for full payment and performance of the Note should Century-  
 21 Omaha become unable to perform its obligations.

22        33. The Financing Agreement Guarantee specifies that any enforcement  
 23 action will be governed by the laws of the state of Washington and that Leslie

1 agrees to submit to the jurisdiction of the federal and state courts in Spokane  
2 County, Washington. Leslie also waived any objection to venue. On February 28,  
3 2017, Leslie reaffirmed his personal guarantee.

4 **G. Termination of the Franchise License Agreement**  
5 **and Default on the Note and Key Money Note**

6 34. On December 12, 2017, Red Lion sent a letter to Century-Omaha and  
7 Leslie informing them that Century-Omaha was in default on both the Franchise  
8 License Agreement and the Note. The letter detailed Century-Omaha's failure to  
9 make any payments under either agreement and demanded that Century-Omaha  
10 cure its default by January 12, 2017. The letter also made clear that Leslie  
11 remained the guarantor of both agreements and would therefore be held personally  
12 liable for all obligations should Century-Omaha fail to cure its defaults.

13 35. Red Lion sent another letter on March 8, 2018 to Century-Omaha and  
14 Leslie terminating the Franchise License Agreement and accelerating all  
15 outstanding debts. Red Lion instructed Century-Omaha and Leslie to immediately  
16 de-identify the Hotel by removing all Red Lion Marks.

17 36. As of April 6, 2018, Century-Omaha was still using Red Lion's  
18 proprietary marks and was still holding the Hotel property out as a Red Lion  
19 franchise.  
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**CLAIMS**

**A. Count One: Federal Trademark and Service-Mark  
Infringement by Defendants Century-Omaha and Leslie**

37. Since March 8, 2018, Century-Omaha has used Red Lion's proprietary marks without Red Lion's consent or approval in connection with the Hotel, and has represented to customers that the Hotel is approved by, sponsored by, licensed by, or otherwise connected with Red Lion.

38. Century-Omaha's actions are likely to have caused, and have caused, customers and members of the public to believe that the Hotel is a franchised Red Lion hotel and is connected with or operated under the aegis or approval of Red Lion, and that the guest services it offers are those of Red Lion or an authorized Red Lion franchisee.

39. These actions have been done with the full knowledge of Red Lion's exclusive right to use, and to license to others to use, Red Lion's Marks, and constitute willful, malicious, and fraudulent attempts to confuse and deceive customers into believing that the Century-Omaha hotel is sponsored by, approved by, licensed by, or otherwise connected with Red Lion.

40. By the acts complained of herein, Century-Omaha has unlawfully infringed Red Lion's Marks pursuant to 15 U.S.C. § 1114. Such acts have been committed with the intent and purpose of appropriating and diminishing the goodwill and reputation associated with the Red Lion Marks.

41. By reason of Century-Omaha's actions, Red Lion has been, and will continue to be, seriously and irreparably damaged unless Century-Omaha is

1 preliminarily and permanently enjoined from using the Red Lion Marks. In  
2 addition, Century-Omaha has unlawfully profited, and Red Lion has been  
3 damaged, in amounts which have not yet been fully determined.

4 42. Century-Omaha has been unjustly enriched by its unauthorized usage  
5 of the Red Lion Marks, and Red Lion is entitled to damages, as well as reasonable  
6 attorney's fees and costs.

7 43. Under the FLA Guarantee and the Financing Guarantee, Leslie  
8 unconditionally guaranteed Century-Omaha's obligations to Red Lion under the  
9 Franchise License Agreement. Leslie is therefore liable for all obligations under  
10 this agreement.

11 **B. Count Two: Breach of Franchise License Agreement, FLA**  
12 **Guarantee, and Financing Guarantee by Defendants Century-**  
13 **Omaha and Leslie**

14 44. Century-Omaha breached the Franchise License Agreement by failing  
15 to pay fees, costs, and other amounts payable under the agreement.

16 45. Red Lion properly terminated the Franchise License Agreement on  
17 March 8, 2018 due to Century-Omaha's failure to perform under the terms of the  
18 agreement.

19 46. Under the FLA Guarantee and the Financing Guarantee, Leslie  
20 unconditionally guaranteed Century-Omaha's obligations to Red Lion under the  
21 Franchise License Agreement. Leslie is therefore liable for all payments and  
22 obligations under this agreement.

1 47. Neither Century-Omaha nor Leslie has paid Red Lion outstanding  
2 fees, costs, or interest accrued under the Franchise License Agreement.

3 48. Red Lion is entitled to recover all damages in such amounts as will be  
4 proven at trial, as well as its reasonable attorney's fees as provided for under both  
5 the Franchise License Agreement and the FLA Guarantee.

6 **C. Count Three: Breach of PIP Financing Agreement and PIP**  
7 **Promissory Note by Defendant Century-Omaha**

8 49. Century-Omaha breached the PIP Financing Agreement and PIP  
9 Promissory Note by failing to pay amounts due thereunder.

10 50. Red Lion is entitled to damages for breach of contract by Century-  
11 Omaha.

12 **D. Count Four: Breach of Financing Agreement, Note, and**  
13 **Financing Agreement Guarantee by Defendants Century-Omaha**  
14 **and Leslie**

15 51. Century-Omaha breached its obligations under the Note and the  
16 Financing Agreement.

17 52. Red Lion properly accelerated the debt under the Note on March 8,  
18 2018.

19 53. Under the Financing Agreement Guarantee, Leslie unconditionally  
20 guaranteed Century-Omaha's obligations to Red Lion under the Financing  
21 Agreement and the Note. Leslie is therefore liable for all payments and obligations  
22 under these agreements.

23 54. Neither Century-Omaha nor Leslie has paid Red Lion the outstanding  
debt or interest accrued under these agreements. Red Lion is therefore entitled to

1 recover all damages in such amounts as will be proven at trial, as well as its  
2 reasonable attorney's fees as provided for under the Financing Agreement, the  
3 Note, and the Financing Agreement Guarantee.

4 55. Red Lion is also entitled to enforce its security interests in the  
5 Improvements by taking possession of the Improvements, selling them, and  
6 applying the proceeds to the obligations of Century-Omaha.

7 **E. Count Five: Breach of Key Money Promissory**  
8 **Note by Defendant Century-Omaha**

9 56. Red Lion terminated the Franchise License Agreement on March 8,  
10 2018 due to Century-Omaha's failure to perform under the terms of the contract.

11 57. Under the Key Money Note, upon termination of the Franchise  
12 License Agreement, Century-Omaha was required to pay Red Lion the principal  
13 balance plus interest.

14 58. Century-Omaha has not paid any of the outstanding debt or interest  
15 accrued. Red Lion is therefore entitled to recover all damages in such amounts as  
16 will be proven at trial, as well as its reasonable attorney's fees as provided for  
17 under the Key Money Note.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, RED LION prays for relief as follows:

20 1. Preliminary and permanent injunctive relief requiring Century-Omaha  
21 and Leslie to de-identify the Hotel and to otherwise comply with their post-  
22 termination obligations under the Franchise License Agreement and Leslie's  
23 guarantees of these obligations.

1           2.     An award of damages from Century-Omaha for all amounts due to  
2 Red Lion, in such amounts as are proven at trial, based on Century-Omaha's  
3 breach of the Franchise License Agreement, the Key Money Note, the PIP  
4 Financing Agreement, the PIP Promissory Note, the Financing Agreement, and the  
5 Note.

6           3.     An award of damages from Leslie for all amounts due to Red Lion, in  
7 such amounts as are proven at trial, based on Leslie's breach of the FLA Guarantee  
8 and the Financing Agreement Guarantee.

9           4.     An award of Red Lion's attorney's fees and costs, as provided for  
10 under the Franchise License Agreement, the Key Money Note, FLA Guarantee,  
11 Financing Agreement, Note, and Financing Agreement Guarantee.

12          5.     Declaratory and injunctive relief to enforce Red Lion's security  
13 interests in the Improvements.

14          6.     Any other relief as may be just and equitable.  
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2 DATED this 20th day of April, 2018.

3 Davis Wright Tremaine LLP  
4 Attorneys for Red Lion Hotels  
5 Franchising, Inc.

6 By s/ Hugh McCullough  
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